

Remarks

Claims 1-12 (original claims) and 20-24 (new claims) are in the case. Claims 13-19 remain in the case as non-elected claims. Claims 1-5, 7, 8, and 10-12 have been rejected over Jackson, U.S. 4,800,672, variously under 35 U.S.C. 102(b) or 103(a). Claims 6 and 9 have been rejected under §103(a) over Manciet, U.S. 6,463,694.

With respect to the combination rejection including the Manciet patent, the filing date for the Manciet patent is October 6, 2000. The effective filing date of Applicant's application is July 10, 2000, which is the filing date of the parent application for which priority was claimed in the filing of this case. In all material respects, the disclosure of the priority application is identical to the current application. For convenience, Applicant is enclosing a copy of the priority application under affidavit of the undersigned.

Since Applicant's effective date precedes that of the Manciet application, the rejections of claims 6 and 9 necessarily fail.

The case now contains two independent claims 1 and 20. Claim 1, as amended, contains all of the limitations of claim 1 as filed, plus all of the limitations of claim 6. Claim 20 includes all of the limitations of original claim 1, plus all the limitations of claim 10.

Accordingly, claim 1 now has a scope consistent with original claim 6. Claim 6 was originally rejected over a combination of Jackson and Manciet. Since the Manciet reference is inapplicable as having an effective date subsequent to Applicant's effective date, the claim should be allowable. Claim 1 now includes an injection device having both a gas and pesticide inlet, and valve means for selectively providing the gas and pesticide to the discharge portion of the fluid injection device. This is important in Applicant's

invention, which comprises a large number of perforated tubes situated throughout the building to be treated. In a preferred use described on page 12 of the application, a technician may initially test the lines for integrity with the audible alert, thus ensuring that flow is reaching all areas of the building. Subsequently, the valve handle is re-set to enable liquid pesticide to flow into the system, and the system is monitored until the lines are filled. Thereafter, the valve handle is switched back to the compressed air setting, blowing the pesticide out through the perforations in the lines.

Jackson, however, shows no injection system. Rather, Jackson simply pumps liquid from a holding tank into the lines, which are solid (i.e., non-perforated) lines terminating in foggers. Thus, in Jackson, liquid pesticide is simply pumped to the ends of the lines, emitting a mist only at one point of the line. By monitoring the accessory flow gauges and pressure gauges, the operator of Applicant's system can monitor the amount of pesticide being distributed, and then can blow the lines clear of liquid after treatment. Nowhere in Jackson is there any hint or suggestion that these features would be desirable. Indeed, Jackson does not disclose any nozzle at all, simply referring to a "connection means (63) for connecting to a source of fumigant under pressure." (Column 4, lines 9-11).

Accordingly, claim 1, as now amended, is believed to be allowable. Since claim 1 is allowable, dependent claims 2-5 and 7-12 should also be allowable.

New claim 20 is essentially original claim 10. Thus, in addition to the exteriorly mounted port, distribution manifold, and plurality of tubing members extending throughout a building, the claim requires flow measuring means for determining the amount of pesticide being distributed into the building, and recording means for providing a printed

record of the amount of pesticide distributed into the building. These items simply are not shown in Jackson. The Examiner's contention that the pressure gauges 54 are flow measuring means is incorrect. A pressure gauge measures the pressure at a given point in the line; that is completely irrelevant to the amount of material passing through the line. Indeed, a pressure gauge could read a high pressure if the line were plugged and not flowing at all. Jackson does not disclose any part of the system which could conceivably be used to measure the amount of flow through any of the lines.

The Examiner argues that Jackson does not show recording means, but recording means are well-known in the art. However, where is there any hint or suggestion in the art that flow measuring means and recording means for providing a printed record would be useful in a pesticide distribution system of the type claimed by Applicant? It is fundamental patent law that suggestions to combine art must come from the references themselves and not from hindsight. It is not a permissible obviousness objection to accumulate bits and pieces of claim elements, relying on hindsight to paste them together. Applicant has provided a very specific system which permits a pesticide company to visit a building periodically, attach a nozzle to a single port in an exterior wall, purge the line to ensure that it is operable, inject a measured amount of pesticide, purge the pesticide into the area desired to be fumigated, automatically measure the amount of pesticide distributed into the building, record the distribution amount and prepare a bill, and leave a billing at the residence. All of this can be done in one short visit. Where in the prior art is such a system disclosed? Where in the references is there a hint or suggestion that such a system is desirable?

Finally, an additional comment is necessary with respect to sub-claims 12 and 24. These claims depend from the independent claims, but also include audible signal means for producing an audible signal when gas flows through the tubing members. The Examiner argues that audible indicators are well-known. This is, of course, true; however, there is no hint or suggestion in Jackson, or any other reference known to Applicant, that an audible indicator would be useful in a pesticide distribution system of the type disclosed and claimed by Applicant. If such a system is obvious, there must be evidence suggesting the use of an audible signal in such a system. Where in Jackson is there a suggestion that an audible signal would be useful for any purpose at all? Applicant submits that these claims deserve additional attention, and are clearly allowable.

Concluding Remarks

Accordingly, the claims as amended are believed fully allowable. Should any problems whatsoever remain in the case, the Examiner is invited to telephone the undersigned to see if they can be resolved.

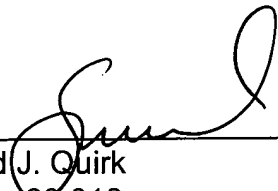
Enclosed is a Petition for Extension of Time under 37 C.F.R. 1.136 for extending the time up to and including July 12, 2003.

Enclosed is an Affidavit of Edward J. Quirk.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 502466 for any matter in connection with this response, including any fee for extension of time, or the fee for additional claims which may be required.

Respectfully submitted,

Date: 7/10/03

By: 
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